

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 13, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANE EDWARD ANDRUS,

Defendant.

No. 1:15-CR-02012-SAB-1

**ORDER DENYING
DEFENDANT'S MOTION FOR
REDUCTION OF SENTENCE
AND COMPASSIONATE
RELEASE**

Before the Court is Defendant's Motion for Reduction of Sentence and Compassionate Release Pursuant to 18 U.S.C. § 3582(c)(1)(A), ECF No. 58. Defendant is represented by Alex B. Hernandez and the Government is represented by Benjamin Seal. Having reviewed the briefing and relevant caselaw, the Court denies the motion for compassionate release.

Defendant is currently serving a 96-month sentence at FCI Lompoc for bank robbery. ECF No. 50. On or about January 23, 2015, Defendant walked into a US Bank wearing a ski mask and dark sunglasses and armed with a pistol—Defendant pointed the pistol at the bank teller and the bank teller provided Defendant with approximately \$2,000, after which Defendant fled the scene. ECF No. 27 at 4.

**ORDER DENYING DEFENDANT'S MOTION FOR REDUCTION OF
SENTENCE AND COMPASSIONATE RELEASE # 1**

1 Officers then located Defendant's vehicle and began a high-speed pursuit, reaching
2 speeds of 95 to 105 miles per hour. *Id.* Defendant was ultimately arrested, and no
3 one was injured. *Id.* Other than this federal offense, Defendant has no other
4 criminal history. ECF No. 58 at 13. Defendant has a scheduled release date of
5 November 16, 2021. *Id.* at 5-6.

6 In his motion, Defendant presents four arguments for why the Court should
7 grant him compassionate release: (1) Defendant has exhausted his administrative
8 remedies, (2) Defendant suffers from diabetes and high blood
9 pressure/hypertension, which places him at risk of becoming seriously ill from
10 COVID-19 complications, (3) continuing to incarcerate Defendant at FCI Lompoc
11 under harsh, unsafe lockdown conditions is a sentence that is greater than
12 necessary, and (3) Defendant is not a danger to the community. ECF No. 58 at 1-5.

13 First, both Defendant and the Government agree that Defendant has
14 exhausted his administrative remedies because Defendant requested a reduction in
15 his sentence, and over 30 days have passed since Defendant made his request. ECF
16 No. 58 at 3-4; ECF No. 64 at 4.

17 Second, though Defendant contracted COVID-19 in May 2020 and
18 recovered, Defendant argues that his preexisting medical conditions put him at a
19 heightened risk if he were to be reinfected—specifically, Defendant alleges that he
20 has a history of Type 2 diabetes and high blood pressure/hypertension. *Id.* at 17.

21 Third, Defendant argues that FCI Lompoc is unable to protect him from
22 COVID-19 reinfection. Defendant reports that, back in May 2020, FCI Lompoc
23 experienced the largest COVID-19 outbreak of any federal prison in the United
24 States.¹ Defendant also reports that conditions in prison facilities make it
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26 ¹ Tyler Hayden, *Lompoc Prison Explodes with Active COVID-19 Cases*, SANTA
27 BARBARA INDEPENDENT (May 13, 2020, 7:16 PM),
28 <https://www.independent.com/2020/05/13/lompoc-prison-explodes-with-active-covid-19-cases/> (accessed on January 12, 2021).

impossible to maintain adequate social distancing or to provide for adequate hygiene and medical treatment. ECF No. 58 at 22. Defendant argues that—though BOP indicates that there are currently no cases of COVID-19 at Lompoc²—this is very difficult to determine unless BOP tests its inmates regularly to determine whether they have actually recovered. *Id.* at 23-24. Thus, Defendant argues that—given the increase in COVID-19 cases around the country— “it is only a matter of time [before] FCI-Lompoc will experience an increase in COVID cases.” *Id.* at 26-27. Defendant states that BOP, in an attempt to respond to the virus, has limited social visits, inmate movement, and suspended all visits and most programming, which makes it difficult for Defendant to receive any rehabilitative resources. *Id.* at 30.

Finally, Defendant argues that his release will not pose a risk to the community. *Id.* at 13. Even though Defendant was sentenced for a crime involving a risk of violence, Defendant has never been in prison before, has already served six years of imprisonment, and only has a little less than a year remaining on his sentence. *Id.* at 14. Additionally, Defendant has stated that his brother—a non-felon with no guns or drugs in the house—lives in Eureka, Nevada and that Defendant could be released to home confinement there if the Court does want to reduce his sentence. *Id.* at 15-16.

Motion Standard

Defendant brings his motion pursuant to 18 U.S.C. § 3582(c)(1)(A).³ Under this provision of the First Step Act, an incarcerated person can seek compassionate

² The Court notes that, according to BOP’s data, there are currently 2 total confirmed active cases (0 inmates and 2 staff) at FCI Lompoc, <https://www.bop.gov/coronavirus/> (accessed January 12, 2021).

³ (c) Modification of an imposed term of imprisonment.--The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all

1 release after exhausting administrative remedies within the Bureau of Prisons. 18
2 U.S.C. § 3582(c)(1)(A). He may be eligible for compassionate release if the Court
3 finds “extraordinary or compelling reasons” to warrant a sentence reduction, he is
4 determined not to pose a risk of danger to the community, and a sentence reduction
5 is consistent with United States Sentence Commission policy statements. *Id.* The
6 Sentencing Guidelines instruct the Court to consider the sentencing factors set
7 forth in 18 U.S.C. § 3553(a) when deciding a motion for compassionate release
8 and provide that the Court should not grant a sentence reduction if the defendant
9 poses a risk of danger to the community, as defined in the Bail Reform Act.
10 U.S.S.G. § 1B1.13.

11 Discussion

12 The Court finds that Defendant has exhausted his administrative remedies as
13 required by the First Step Act. Defendant made the required request for
14 compassionate release on April 5, 2020. ECF No. 58 at 3. The Court also notes that
15 it is frustrated by the fact that the warden at FCI Lompoc apparently did not

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17 administrative rights to appeal a failure of the Bureau of Prisons to bring a
18 motion on the defendant’s behalf or the lapse of 30 days from the receipt of
19 such a request by the warden of the defendant’s facility, whichever is earlier,
20 may reduce the term of imprisonment (and may impose a term of probation
21 or supervised release with or without conditions that does not exceed the
22 unserved portion of the original term of imprisonment), after considering the
23 factors set forth in section 3553(a) to the extent that they are applicable, if it
24 finds that--

25 (i) extraordinary and compelling reasons warrant such a reduction; or
26 (ii) the defendant is at least 70 years of age, has served at least 30
27 years in prison, pursuant to a sentence imposed under section 3559(c), for
28 the offense or offenses for which the defendant is currently imprisoned, and
a determination has been made by the Director of the Bureau of Prisons that
the defendant is not a danger to the safety of any other person or the
community, as provided under section 3142(g);
and that such a reduction is consistent with applicable policy statements issued by
the Sentencing Commission.
18 U.S.C. § 3582(c)(1)(A).

1 address or respond to Defendant's request in any way. There is nothing to suggest
2 that giving the warden additional time to respond or that a second request by
3 Defendant would be treated differently. Thus, the Court finds that Defendant has
4 exhausted administrative requirements, even if he were not required to do so as
5 some courts have held.

6 The Court next considers whether extraordinary and compelling
7 circumstances exist to warrant re-sentencing Defendant to an effective sentence of
8 time-served or to a period of home confinement. However, the Court is not able to
9 determine based on the record before it that Defendant is at a heightened risk for
10 serious illness or death from COVID-19. Defendant indicates he has two
11 conditions that he believes put him at heightened risk of illness or death: Type 2
12 diabetes and high blood pressure/hypertension. ECF No. 58 at 17. However,
13 Defendant is only 47 years old. *Id.* at 18. Defendant also already contracted
14 COVID-19 in May 2020 and recovered. ECF No. 64 at 6; ECF No. 58 at 8-10.
15 Though this does not mean that Defendant is at zero risk of serious complications
16 were he to re-contract COVID-19, Defendant's recovery at least demonstrates that
17 his two pre-existing conditions do not automatically put him at a heightened risk of
18 illness or death. Moreover, the fear of contracting COVID-19 again is not an
19 extraordinary or compelling ground for release and Defendant is likely to receive
20 the COVID-19 vaccine relatively soon as a federal inmate. Thus, Defendant fails to
21 meet his burden of establishing the existence of extraordinary and compelling
22 reasons that warrant a sentence reduction.

23 Finally, the Court finds that the § 3553(a) sentencing factors do not favor
24 resentencing Defendant or a sentence reduction. The Court is generally reluctant to
25 alter sentencings after the fact and will only do so in unusual and compelling
26 circumstances. Here, Defendant was convicted of bank robbery, during the course
27 of which he brandished a weapon in a bank and led officers on a high-speed
28 pursuit. This conduct constitutes an extremely serious offense, which posed a

1 significant risk to the community. Additionally, Defendant agreed to a minimum of
2 96 months of imprisonment as part of his plea agreement and the Court concluded
3 at the time of sentencing that the plea agreement was a fair resolution of the
4 competing interests involved in sentencing. ECF No. 27. Finally, Defendant is
5 within months of completing his term of incarceration—he is scheduled to be
6 released on November 16, 2021. ECF No. 58 at 5-6. Thus, the Court finds that the
7 sentencing factors articulated in § 3553(a) do not favor resentencing Defendant and
8 that there are no compelling reasons to release Defendant early.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Defendant's Motion for Reduction of Sentence and Compassionate
11 Release Pursuant to 18 U.S.C. § 3582(c)(1)(A), ECF No. 58, is **DENIED**.

12 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
13 file this Order and provide copies to Defendant and counsel.

14 **DATED** this 13th day of January 2021.



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20 Stanley A. Bastian
21 United States District Judge
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